IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4834 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SARVODAYA KELVANI MANDAL

Versus

CHANDULAL B MANKADIA

Appearance:

MR HA RAICHURA for Petitioner No. 1

MR DG CHAUHAN for Petitioner No. 1

MR AD OZA for Respondent No. 1

NOTICE SERVED for Respondent No. 2-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/07/2001

ORAL JUDGEMENT

This petition is directed against the order passed by the Gujarat Secondary Education Tribunal at Ahmedabad in Application Nos.16 of 1987 and 17 of 1987. Respondents 1 and 2 herein were the original applicants before the Tribunal. They approached the Tribunal with a prayer to grant them compensation under Regulation 33 of the Secondary Education Regulations, 1974. It is the

case of the applicant before the Tribunal that they were primary teachers of the petitioner-school and in view of the fact that some classes were to be reduced, they were apprehending that they will be treated as surplus. It is not in dispute that, initially, the management had written to the District Education Officer, asking permission to treat both these respondents 1 and 2 as surplus teachers as some classes were to be reduced, but the D.E.O. had not granted the said permission to the Management. Therafter, it seems that on the say of both these respondent Nos. 1 and 2, the D.E.O. has treated them as surplus teachers and they were absorbed in other schools. There is also a resignation letter which is at pages 21 and 22, (Annexures `D' and `E'), by which each of respondents 1 and 2 addressed a letter of resignation to the President of the School, wherein they have observed that they are absorbed in another school and, therefore, they may be treated as surplus. They have also stated that the Management will not be responsible for any financial liability. Subsequently, respondents 1 and 2 were absorbed in other schools and, therafter, they approached the Gujarat Secondary Education Tribunal by way of an application under Regulation 33 for getting compensation, as, according to them, even though they were permanent employees, their services were terminated without following the provisions of Regulation 33 of the Act.

The Tribunal, after recording the evidence of both the sides, came to the conclusion that so far as the resignation aspect is concerned, the concerned teachers have resigned under duress and pressure from the school. The said resignation was, therefore, not treated as bona fide resignation. The Tribunal came to the conclusion that both the applicants before the Tribunal were to be treated as surplus teachers and ultimately, the D.E.O. also treated them as surplus, may be on their own say and in that view of the matter, the Tribunal came to the conclusion that they were entitled to compensation under Regulation 33. The Tribunal accordingly allowed both the applications which were filed by respondents 1 and 2 by allowing Application Nos. 16 of 1987 and 17 of 1987. Being aggrieved by the said order, the petitioner-Management has filed this Special Civil Application, challenging the common order passed by the Tribunal in the aforesaid proceedings.

The matter was admitted and the order of the Tribunal was stayed and now, the matter has reached for final hearing.

Mr.D.G. Chauhan has argued that since there was no termination order, provisions of Regulation 33 had no application to the facts of this case. Mr.Chauhan further argued that both the concerned teachers were absorbed in the primary school and as they were serving with the petitioner's school, they were paid their salary regularly and since there was no monetary loss, no compensation could have been awarded to them. Mr.Chauhan also argued that, in any case, since they have resigned from the school, they were not entitled to compensation under Section 33 and as the Management has neither terminated their services nor treated them as surplus, there was no question of payment of any compensation.

Mr.A.D. Oza, on the other hand, supported the reasoning given by the Tribunal and submitted that this petition being essentially a petition under Article 227 of the Constitution of India, the order of the Tribunal, in his submission, is required to be upheld.

So far as the first submission of Mr.Chauhan regarding Regulation 33 is concerned, reference is required to be made to Regulation 33, which reads as under :-

> " ... ...
>
> 33. Termination of employment.-(1) Where services of a permanent employee is terminated by the management in accordance with the provisions of section 36 such employee shall be entitled to compensation-
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> (a) equal to 6 months' salary including allowance if the employee has put in the school for a period not exceeding five years and;
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> (b) equal to 6 months' salary including allowances for the first five years and a month's salary for every year of the period exceeding five years, if the employee has put in service in the school for a period exceeding five years.
>
> (2) The service of a temporary employee may be terminated by the management at any time without assigning any reason after giving one calendar month's (Pay and allowances, if any) in lieu of such notice:

Provided that no notice shall be given during vacation or so as to cover any part of the vacation or within the first fortnight after the vacation.

... ..."

It is no doubt true that there is no specific termination order and the Management has not passed any termination order against respondents 1 and 2. However, the Tribunal has, in detail, dealt with this point. Relying upon two Division Bench judgments, the Tribunal has observed as under :-

" ... ...

The Gujarat High Court has held that once there is retrenchment or simple termination because of class reduction and the secondary school employee is relieved by the School, right to compensation can't be disputed. In Sp.C.A. No.506 and 507 of 1980 (Coram : N.H. Bhatt and B.S. Kapadia, JJ.) decided on 12.9.83, the Tribunal's view that even if after termination the employee is absorbed in some other school by the deptt., he would not lose the right to compensation under Reg. 33 has been confirmed. The same view has been taken by another Division Bench of the Gujarat High Court in Sp.C.A.No.1175/84 (Coram : B.K. Mehta Actg. C.J. and R.J. Shah, J. decided on 1.5.84). Therefore, it is required to be held that the secondary teachers would be entitled to compensation as soon as they are retrenched without any stigma on class reduction. Reg. 33 as it was on the statute book upto 11.4.88 thus left no scope of an exception for awarding compensation to a confirmed secondary employee if he is terminated by way of simple termination. Even if the management has not got funds, such hard facts would not make a bad law and the school would be bound to pay the compensation. Therefore, the contentions raised by the opp. school against awarding compensation can't be accepted.

... ..."

In view of the aforesaid facts, even though there is no specific order of termination, looking to the facts of this case, services of respondents 1 and 2 were required to be treated as surplus. Similarly, simply because respondents 1 and 2 have got their employment elsewhere, it is no ground to deny compensation under Regulation 33 as the aforesaid point is also concluded by the judgments of the Division Bench of this Court and I am bound by the aforesaid Division Bench judgments.

So far as the resignation aspect is concerned, the Tribunal, on appreciation of evidence, has given a finding of fact that the resignation was given under pressure. While exercising my powers under Article 226 of the Constitution of India, it is not open for me to re-appreciate the evidence on record and I cannot re-appreciate the said finding of fact.

In view of the aforesaid position, it is clear that even if a teacher is treated as surplus, he is entitled to compensation on the same lines as if his services were terminated without following the provisions of Section 33. Similarly, even if the said teacher is employed in another school, and even if he may not have suffered any financial loss, it is no ground to deny compensation under Regulation 33. Since the aforesaid aspect has been dealt with by the Division Bench of this Court, it cannot be said that the Tribunal has committed any error of law or jurisdiction in passing the impugned order. It is also required to be noted that, initially, the management itself sought permission of D.E.O. to treat respondents 1 and 2 as surplus teachers and under this background, ultimately, if resignation is given and if it was found that it was not a genuine resignation and subsequently, even if respondents 1 and 2 have stated before the D.E.O. that they have no objection in being treated as surplus, it cannot be said that they were not treated as surplus teachers by the Management.

Under these circumstances, it cannot be said that the judgment of the Tribunal suffers from any infirmity. In that view of the matter, I do not find any substance in this petition and the same is accordingly dismissed. Rule is discharged with no order as to costs.

(P.B. Majmudar, J.)

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(apj)